INDEX

CITATIONS

Cases:

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 32

UNITED STATES OF AMERICA, APPELLANT

v.

ROBERT M. HARRISS, RALPH W. MOORE, TOM LINDER, AND NATIONAL FARM COMMITTEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court dismissing the information (R. 39–40) is reported at 109 F. Supp. 641.

JURISDICTION

The order of the District Court was entered on January 30, 1953 (R. 40). Notice of appeal was filed by the United States on February 27, 1953 (R. 41), and probable jurisdiction was noted by this Court on May 4, 1953 (R. 43). The jurisdiction of this Court to review on direct appeal a judgment dismissing an information based on

the unconstitutionality of the statute on which the information is founded is conferred by 18 U. S. C. 3731. See also Rules 37 (a) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

Section 305 (a) of the Federal Regulation of Lobbying Act requires that certain records be kept and reports filed by persons receiving contributions or expending money for the purposes designated in Section 307, *i. e.,* to influence, directly or indirectly, the passage or defeat of federal legislation. Section 308 (a) requires any person who engages himself for pay for the purpose of attempting to influence the passage or defeat of legislation to register before doing anything in furtherance of such object. Section 310 (a) makes violation of any of these disclosure requirements a misdemeanor, punishable by fine or imprisonment, and Section 310 (b) prohibits, for a period of three years, any person convicted of such a misdemeanor "from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation." The present information charges violations of Sections 305 and 308 by persons who expended or collected money, or engaged themselves for pay, for the purpose of communicating directly to Congress on federal legislation or of causing others so to communicate.

The questions presented are:

1. Whether the purposes specified in Section 307 are so vague and indefinite as to render Section 305 (a) invalid as applied to this information.

2. Whether Section 308 is unconstitutionally indefinite as applied to this information.

3. Whether Sections 305, 307, and 308 violate the First Amendment, as applied to this information.

4. Assuming that the penalty in Section 310 (b) is unconstitutional, whether the unconstitutionality of that provision serves to invalidate Sections 305 and 308, despite the inclusion in the Act of a separability clause.

STATUTE INVOLVED

The full text of the Federal Regulation of Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. 261–270, is set forth in the Appendix, *infra,* pp. 89–95.

STATEMENT

A. THE INFORMATION

An information in ten counts charging violations of Sections 305 and 308 of the Federal Regulation of Lobbying Act was filed against the defendants in the United States District Court for the District of Columbia on August 31, 1949 (R. 1–23).

1. *Section 308 counts.*—Counts I, VIII, and IX against defendants Moore, McDonald,[1] and Lin-

[1] The death of McDonald was suggested of record in the District Court on January 30, 1953, and the case was dismissed as to him (R. 38).

der, respectively, were laid under Section 308 of the Act (*infra*, pp. 93–94), and charged each defendant with having been a person who engaged himself for pay for the purpose of attempting to influence the passage of legislation relating to the price of farm commodities, without having registered as required by that section of the statute.

a. Moore was charged in count I (R. 1–6) with having engaged himself for pay and other considerations, on behalf of the defendant Harriss, for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by Congress which would cause a rise in the price of agricultural commodities and commodity futures and (b) the defeat of legislation by Congress which would cause a decline of such prices. It was charged that, in pursuance of this engagement, he did the following things (R. 4–6):

> (a) Procured the Association, Southern Commissioners of Agriculture, and the Farm Commissioners Council to attempt to influence legislation by Congress relating to (1) parity on farm prices, (2) repeal of the oleomargarine tax, and (3) the President's program for legislation providing for an increase in commodity trading margins.
>
> (b) Procured one McCloskey to urge the passage of legislation by writing statements which were presented to committees of Congress and to members of Congress, urging the passage of the Case Bill and

other bills which would enhance the prices of farm commodities.

(c) Paid the cost of a dinner at the Raleigh Hotel in Washington, D. C., in the name of the North Central States Association of Commissioners, Secretaries and Directors of Agriculture, at which dinner a large number of members of Congress were present, and at which speeches and statements were made concerning legislation by Congress.

(d) Paid the cost of a dinner at the Mayflower Hotel, Washington, D. C., in the name of Farm Commissioners Council, at which dinner a large number of members of Congress were present, and at which speeches and statements were made concerning legislation by Congress relating to farm commodities.

(e) Procured one Clair, for pay, to write up material for the Association, Southern Commissioners of Agriculture, to be presented to the Congress of the United States and its committees relative to legislative matters affecting the price of farm commodities.

(f) Procured one McCloskey to write letters to Grange officers in the Pacific northwest, urging them to write and wire their Congressmen to put peas in the program for foodstuffs to be sent to Europe under the European recovery program.

(g) Procured one Wilken to appear before committees of Congress to urge

> legislative action regarding farm commodities which defendants desired; and, specifically, procured him to testify before the House Agriculture Committee to urge the defeat of legislation which would tend to cause lower prices of agricultural commodities, and, also, to testify before the House Ways and Means Committee concerning proposed legislation respecting the reciprocal trade agreements program to urge the defeat of any legislation which would tend to cause lower prices of farm commodities.

b. Similarly, Linder, who was alleged to have been Commissioner of Agriculture for the State of Georgia (R. 1), was charged in count IX (R. 19–21) with having, outside of and apart from his official capacity, engaged himself for pay and for other consideration on behalf of defendants Moore and Harriss, for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures, and (b) the defeat of legislation which would cause a decline of such prices (R. 20). And it was charged that, in pursuance of this engagement, Linder did the following things (R. 20–21):

> (a) Testified before Committees of Congress, sent letters and telegrams to members of Congress and officials of the executive

branch of the Government of the United States, issued press releases which were distributed by the Association, the Southern Commissioners of Agriculture, and the Farm Commissioners Council, to members of the Congress of the United States, and made speeches at various functions of these two organizations.

(b) Together with the defendant, James W. McDonald and others, organized the Farm Commissioners Council, for the purpose of utilizing it in influencing and attempting to influence legislation by the Congress relative to farm commodities.

(c) Made a statement before the Senate Committee on Agriculture, using material prepared by one Clair,[2] opposing proposed legislation which would reduce the prices of farm commodities.

(d) Delivered a speech at a dinner alleged to have been sponsored by the Association, Southern Commissioners of Agriculture, staged at the Mayflower Hotel, Washington, D. C., at which about 200 members of Congress were present; and in that speech urged Congress to enact legislation ending the Office of Price Administration controls of prices.[3]

C. Count IX, against the deceased defendant, McDonald, was substantially the same as that

[2] See allegation (e) of Count I, with respect to defendant Moore (*supra*, p. 5). Cf. R. 5 with R. 21.

[3] See allegation (d) of Count I, with respect to defendant Moore (*supra*, p. 5). Cf. R. 5 with R. 21.

against Linder, except that the specific events and statements were different (R. 17–19).

2. *Section 305 counts.*—The remaining counts—II, III, IV, and V, against the defendant Moore; VI and VII, against the defendant Harriss; and X, against the defendant National Farm Committee—were all laid under Section 305 of the Lobbying Act (*infra,* pp. 91–92). The counts against Moore and Harriss charged them with having made various expenditures for the purpose principally of influencing, directly or indirectly, legislation which would affect the prices of agricultural commodities, and failing to file the reports required by Section 305. Count X, against the National Farm Committee, charged that the Committee, whose principal purpose was to influence, directly or indirectly, legislation relating to agricultural commodity prices, solicited and received specific sums of money for such purposes, and failed to file the required reports.

The detailed allegations with respect to defendants Moore and Harriss show that many of the expenditures were in connection with the acts alleged to have been done by Moore, MacDonald, and Linder, in pursuance of their hire agreements, but other expenditures of similar purpose were also charged. More specifically, count II charges that Moore, for the purpose of influencing and attempting to influence the passage of legislation affecting the prices of agricultural commodities and commodity futures, "paid money to,

financed and sponsored activities of" the Association, The Southern Commissioners of Agriculture, the Farm Commissioners Council, and the North Central States Association of Commissioners, each of which was an unincorporated association which had "as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture" (R. 7). Count II also charges the procurement, for hire, of the services of the defendants Linder and Moore, who were state agricultural officers, as well as officers in one or more of these associations; and, further, the payments of sums to Wilken and McCloskey as set out earlier in count I (R. 5–7).[4]

Count V, also against Moore, charges the following expenditures (R. 11–13):

> (a) On or about November 7, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of $46.21 for the services of said Hanson in mimeographing 25 copies of a document sent to R. M. Harriss, New York, at the request of the defendant James E. McDonald.
>
> (b) On or about November 20, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of $63.05 for the services of said Hanson in preparing and sending out a press release on behalf of the Association, Southern Commissioners and Directors of Agriculture, in which a hearing was requested before the Senate Com-

[4] *Supra*, pp. 5–6.

mittee on Agriculture on the proposed legislation which the President mentioned in his State message on January 17, 1947.

(c) On or about November 20, 1947, to one C. C. Hanson * * * in the sum of $33.92 for the services of said Hanson, in preparing and sending out a press release, 50 copies of which the said Hanson delivered at the National Press Club.

(d) On or about December 4, 1947, to the Mayflower Hotel, Washington, D. C., the sum and amount of $1,589.98 which amount was credited to the defendant Moore's account at said hotel against a charge therein entered for 293 dinners on November 24, 1947.[5]

(e) On or about December 31, 1947, to the Mayflower Hotel, Washington, D. C., the sum and amount of $4,356.01 which amount was credited to the defendant Moore's account at said hotel against the balance of the charge for 293 dinners on November 24, 1947, and other items.[5]

(f) On or about December 15, 1947, and again on or about December 19, 1947, to one C. C. Hanson, the sums and amounts, respectively of $500 and $459.36, in payment of an expense account of the said Hanson.

(g) On or about December 18, 1947, to one C. C. Hanson, * * * the sum and amount of $77.73 for the services of said Hanson in preparing a document to President Wilson of the Association of Southern Commissioners and Directors of Agriculture.

[5] Compare items (c) and (d) in count I, *supra*, p. 5.

(h) On or about December 18, 1947, to one C. C. Hanson, * * * the sum and amount of $52.76 for the services of said Hanson in preparing and sending out a Farm Commissioners press release stating that nearly 200 members of Congress had accepted invitations to the dinner sponsored by the Farm Commissioners Council.

(i) On or about December 18, 1947, to one C. C. Hanson, * * * the sum and amount of $205.61 for the services of said Hanson on press releases in one of which the defendant James E. McDonald stated that he found the President's proposal unsound.

(j) On or about December 18, 1947, to one C. C. Hanson, * * * the sum and amount of $94.00 for the services of said Hanson in respect to a news item in the Washington Post, 531 copies of which were sent to members of Congress.

(k) On or about December 18, 1947, to one C. C. Hanson, * * * the sum and amount of $197.34 for the services of said Hanson in preparing 1600 copies of a statement made by the defendant Tom Linder before the Senate Committee on Agriculture.

(l) On or about December 18, 1947, to one C. C. Hanson, * * * the sum and amount of $100 to compensate one Dr. Clair, for work on a press release.

(m) On or about June 1947, to one C. H. Wilken, Washington, D. C., the sum and amount of $1,000.

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(n) During said quarter the defendant loaned to one C. H. Wilken, the sum and amount of $5,750.

The other Section 305 counts against Moore and Harriss[6] do not materially differ, except that they relate to different reporting quarters under the Lobbying Act, and except that Harriss is charged with having funnelled some of his expenditures through Moore (see especially R. 16–17).

The Section 305 count against the Farm Committee (count X) is different in that it relies on the language of Section 305 predicating liability on the solicitation, collection, or receipt of funds, rather than on the expenditure of funds as is the case in the Moore and Harriss counts. Thus, count X charges that the National Farm Committee, whose principal purpose was to influence the passage or defeat of legislation affecting the price of agricultural commodities and commodity futures, during the third quarter of 1946 solicited, collected and received contributions for carrying out its purposes, and, specifically, solicited, collected, and received the sum of $1,000 from defendant Harriss, all without having at any time complied with the reporting requirements of Section 305 of the Act (R. 22–23).

B. THE HOLDING OF THE DISTRICT COURT

All of the defendants pleaded not guilty to all counts (R. 42), and moved to dismiss the infor-

[6] *I. e.*, counts II, III, IV, VI, and VII.

mation, contending, *inter alia,* that the lobbying statute was unconstitutionally vague and indefinite, and an unconstitutional infringement of the rights guaranteed by the First Amendment (R. 23–38).

The District Court granted their motion, adopting for this case the opinion of a three-judge court of the same district in *National Association of Manufacturers* v. *McGrath,* 103 F. Supp. 510, vacated on grounds of mootness, 344 U. S. 804. In that opinion, the District Court had held that the language of Section 307 (*infra,* pp. 92–93), making the disclosure requirements applicable to any person whose "principal purpose" was "to influence, directly or indirectly, the passage or defeat of any legislation," is so vague and indefinite as to be in violation of the Fifth Amendment; that the same defect vitiates Section 305 (*infra,* pp. 91–92), which incorporates the critical language of Section 307; that the prohibition against lobbying in Section 310 (b) (*infra,* p. 95), imposed as a penalty for violation of the Act, is repugnant to the constitutional guaranty of freedom of speech and of petition; and that this infirmity of the penal provision makes unconstitutional Sections 303 through 307 of the Act.

The decision in the *N. A. M.* case had not passed upon the validity of Section 308 (*infra,* pp. 93–94). As to that Section, the District Court in

the present case held that the invalidity of the 310 (b) penal provision, which also applies to violations of Section 308, invalidates Section 308, in spite of the separability clause in the statute (R. 39–40). Thus, all counts of the information, which was based on Sections 305 and 308, were held bad.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In dismissing each count of the information.

2. In holding that Section 305 (a) of the Federal Regulation of Lobbying Act is unconstitutionally vague and indefinite because, by incorporating Section 307 of the Act, it applies to any person who receives contributions or expends money for the purpose of influencing "directly or indirectly" the passage or defeat of federal legislation.

3. In holding that the penalty imposed by Section 310 (b) of the Act, prohibiting convicted violators from lobbying for a three-year period, is unconstitutional as in contravention of the First Amendment.

4. In holding that the invalidity of Section 310 (b) in itself serves to invalidate Sections 305 and 308 of the Act, despite the inclusion in the Act of a separability clause.

SUMMARY OF ARGUMENT

Three counts of this information come under Section 308 of the Federal Regulation of Lobbying Act, which requires registration by any person "who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation" by Congress; the remaining seven counts are laid under Section 305, which demands quarterly reports from persons "receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307," *i. e.*, (a) the "passage or defeat of any legislation by the Congress * * *," or (b) "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress * * *." Somewhat different constitutional problems are raised by Section 308, on the one hand, and Sections 305 and 307, on the other. In addition, the validity of each of these provisions cannot be appraised *in vacuo,* but as it applies in this case to the particular charges made against these defendants. No other case is here.

I

Sections 305 and 307 of the Federal Regulation of Lobbying Act of 1946 are not unconstitutionally vague and indefinite, as applied to the seven counts of the information laid under those sections.

A. It is clear, from the language and legislative history of the sections, that they were designed to apply, at the least, to those who pay others to state views to Congress, whether formally in committee sessions or informally in speeches, letters, or telegrams, so long as the statements are directed at Congress or Congressmen. It is also clear that the sections were intended to apply to those who spend money in course of inducing others, for nonfinancial considerations, directly to communicate with Congress—in short, to those who sponsor campaigns asking persons to write or contact their Congressmen with respect to the merits of particular legislation. These activities are the core of the traditional understanding of "lobbying" (see *United States* v. *Rumely*, 345 U. S. 41, 47), and were undoubtedly intended to be covered by a statute called the "Federal Regulation of Lobbying Act." Both the history of the 1946 Act itself, and that of the 1936 progenitors on which it was modelled, show that, whatever else Congress may have had in mind,[7] it certainly desired to reach those who seek or sponsor direct communication with Congress and Congressmen.

B. Examination of the seven Section 305 counts of this information shows that the great bulk, if not all, of the charges against the defendants are either specifically of this nature, or provable by

[7] For example, attempts to "saturate the thinking of the community" or organized efforts to influence mass public opinion on federal matters. Cf. *United States* v. *Rumely*, 345 U. S. 41, 47.

facts of this nature. Each count involves charges of failing to report (1) payment to others to communicate directly with Congressmen on pending or proposed legislation, or (2) expenditures or receipt of money in an attempt to induce others to communicate with Congress, usually by letter, on pending or proposed legislation. The gist of these counts is the defendants' undisclosed efforts to have Congressmen contacted on behalf of their views, either directly by the defendants' emissaries or through a stimulated letter campaign. Defendants, with private financial interests at heart, were attempting to exert direct influence on Congressmen in the guise of official representatives of the farmers of Georgia and Texas and genuine proponents of the public weal.

C. Applied to these facts, there is no constitutional vagueness in Sections 305 and 307. The covered activities are simple, specific, and definite. The statutory language, *i. e.*, "to influence, directly or indirectly, the passage or defeat of any legislation," clearly comprehends actions of this type, and, since they are so close to "lobbying" in its most commonly accepted sense, defendants received more than sufficient warning that they were subject to the Regulation of Lobbying Act. The added requirement that defendants be proved to have had a specific purpose to secure a direct contact with Congress also increases their protection. As applied to this case, Sections 305 and 307 are at least as definite as many other laws which this

Court has upheld. E. g., *United States* v. *Wurzbach,* 280 U. S. 396, 399; *United States* v. *Petrillo,* 332 U. S. 1; *Jordan* v. *De George,* 341 U. S. 223; *Boyce Motor Lines* v. *United States,* 342 U. S. 337.

D. The District Court also apparently thought the statute invalid because coverage was based, in part, on whether solicitations were made, or money received, by persons whose "principal purposes" were the purposes designated in Section 307. But the statute itself shows that this "principal purpose" requirement is not significant in the present case because coverage may clearly be predicated *either* on (i) expenditures for the designated purposes, (ii) the solicitation or receipt of specific contributions principally for the designated purposes, or (iii) any solicitation or receipt by a person or group organized principally for the designated purposes. And all of the counts under Section 305, except count X (against the National Farm Committee), are based on *expenditures,* to which the "principal purpose" qualification does not seem to apply. In any event, there will be no difficulty in determining the purpose of these expenditures, as they are alleged in the information, since they are plainly single-purposed, and not multi-purposed expenditures as to which the "principal purpose" requirement is important. Similarly, in the case of the National Farm Committee (count X), it is alleged that the purpose of the unreported receipt of money was the specific pur-

pose designated by the statute; this is alleged to be the sole purpose.

II

Section 308 of the Act is not unconstitutionally indefinite as applied to the two remaining counts laid under that section.[8] Like Sections 305 and 307, Section 308 governs at least those who are hired to express views to Congress or to cause others to do so, and Moore and Linder are charged with failing to register although they were hired for these specific purposes.[9]

III

As applied in this information, Sections 305, 307, 308—requiring disclosure by those who pay others to express views to Congressmen on their behalf, or conduct letter-writing campaigns, or hire themselves to affect legislation by these methods—do not violate the First Amendment.[10] Whatever restraint this requirement may impose on communication is indirect, incomplete, peripheral, and private. There is no legal or governmental sanction on the expression of ideas; if sanction there be, it is fear that the reporter or registrant will be subject to private pressures.

[8] The count against McDonald has abated because of his death (R. 40).

[9] The District Court did not hold Section 308 too vague, or that the Act violated the First Amendment, although defendants made those contentions.

[10] See footnote 9, *supra*.

This may, indeed, be an actual restraint, but it is not an abridgment of First Amendment rights. Self-censorship or self-restraint in expression of ideas—stemming from but going beyond a legal requirement (*e. g.,* the slander and libel laws)—is a common result of timidity, caution, care, or the desire to avoid controversy or litigation, but this type of voluntary, tangential restraint has never been thought within the First Amendment, even where it flows from fear of a statutory penalty or other legal sanction. *A fortiori,* there is no abridgment here where the feared sanction is concededly not legal at all, but social or economic pressure consequent upon disclosure of true facts. At least where disclosure serves a legitimate purpose, it cannot invade First Amendment rights.

On the other hand, the interest in favor of which this peripheral "restraint" is imposed is fundamental to the very processes of democratic society. For forty years, Congress has been concerned with the relationship between (a) fact-finding and opinion-finding, as bearing on the legislative process, and (b) the individuals, groups, and organizations which seek to influence Congressional action. Congress' own studies, and those of other responsible students, have indicated that there is at least reasonable basis for the belief that Congress' functioning has been impaired by lack of knowledge of the character, sponsorship, and activities of those who seek to influence it. Disclosure, it is thought, will aid the reaching

of wiser judgments on federal legislation by helping Congress and the electorate to evaluate the facts and arguments pressed on Congress and to appraise the true scope of the blocs of opinion said to support or oppose a particular bill or project. The aim of the Lobbying Act, which has not been to silence or prohibit ideas but to understand their sponsorship, is consonant with, rather than contrary to, the First Amendment.

IV

The information should not have been dismissed on the basis of the alleged invalidity of the penal provision of Section 310 (b). Even if Section 310 (b) were invalid, the remainder of the Act is plainly separable. Section 310 (a) imposes a penalty of fine and/or imprisonment, which is clearly separable from the penal provision of Section 310 (b), both as a matter of obvious Congressional intention and because the Act has an explicit separability clause (60 Stat. 812, 814, *infra*, p. 95). There is no reason to hinge valid substantive provisions on the "additional" and minor penalty in Section 310 (b). Moreover, the penalty is valid as properly construed.

V

The validity of the Lobbying Act as applied to other situations is not before the Court and should not be determined. This Court does not reach out

to decide hypothetical constitutional controversies unsupported by a proper record. E. g., *United Public Workers of America* v. *Mitchell,* 330 U. S. 75; *Rescue Army* v. *Municipal Court,* 331 U. S. 549, 568 ff. Nor do the defendants have standing to raise the alleged rights of others. E. g., *United States* v. *Wurzbach,* 280 U. S. 396, 399. And where the statute applies to the case before the Court, borderline situations of greater difficulty are put aside until they arise. Since the Lobbying Act is severable as to both provisions and circumstances, there is no occasion to breach these accepted principles of constitutional adjudication, which have been expressly held to apply under the Criminal Appeals Act. *United States* v. *Petrillo,* 332 U. S. 1, 5, 10–12; *United States* v. *Spector,* 343 U. S. 169, 172.

ARGUMENT

Three of the ten counts of the information (against Moore, Linder, and the deceased defendant, McDonald) are laid under Section 308 of the Federal Regulation of Lobbying Act, and the other seven (against Moore, Harriss, and the National Farm Committee) come under Section 305. The former requires "any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation" by Congress to register with the Congress "before doing anything in furtherance of such object." Section 305 de-

mands a quarterly written report from "every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307."[11] The District Court invalidated Section 305 on two grounds, *first,* that Section 307, which was incorporated, is too vague and indefinite, and, *second,* that the penalty provision of Section 310 (b), prohibiting convicted violators from lobbying for a three-year period, is unconstitutional and inseparable from the rest of the Act. Section 308 was invalidated solely on the latter basis. The constitutional problems posed in this Court by the two sections are, therefore, not fully coextensive—aside from the fact that the provisions differ in wording and reach.

The constitutional issues before the Court also come here embedded in the context of this particular information. These charges concern defendants who collected or spent money, or engaged

[11] Section 307 provides that the Lobbying Act shall apply, with stated exceptions, to any person "who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

themselves for pay, for the specific purpose of making representations, or causing others to make representations, to members of Congress—in committee assembled or at dinners in Washington, through publications designed for direct Congressional perusal, or through letters to Congressmen. The pith of the information is that the defendants sought, for their undisclosed private gain, to influence Congress to maintain high prices for farm products by deliberately purchasing representations which would appear to Congress to be made on behalf of the general public or of the country's farmers. Purporting to speak to Congress on behalf of the farmers of Georgia and Texas, the Commissioners of Agriculture of those States (Linder and McDonald) actually represented, for pay, the defendants' personal financial interest; the same is charged of the representations made or procured on defendants' behalf by various agricultural organizations and other persons.

The vagueness which the District Court found in the statute relates, not to its application to these averments of paid direct representations to Congress on behalf of undisclosed interests, but to its possible impact on activities more remote from such direct (but camouflaged) communication. Cf. *National Association of Manufacturers* v. *McGrath*, 103 F. Supp. 510 (D. D. C.), vacated on the ground of mootness, 344 U. S. 804; *United States* v. *Rumely*, 345 U. S. 41. But whether or not the Lobbying Act

would be valid as applied to all organized efforts to influence mass public opinion on federal matters, it was error for the court below to dismiss this information in view of the clearly operable area for the statute in the circumstances presented here—the area of direct communication with Congress. The thrust of this brief is, therefore, directed to the validity of the Act as it relates to the specific situation alleged in this information. It is in the light of this situation that we discuss Sections 305 and 307, then Section 308, and finally Section 310 (b).

I. SECTIONS 305 AND 307 OF THE FEDERAL REGULATION OF LOBBYING ACT ARE NOT UNCONSTITUTIONALLY INDEFINITE AS APPLIED TO THE COUNTS OF THE INFORMATION LAID UNDER THOSE PROVISIONS

A. SECTIONS 305 AND 307 PLAINLY APPLY TO THOSE WHO EXPEND MONEY EITHER (A) TO PAY OTHERS TO COMMUNICATE TO CONGRESS OR (B) IN THE COURSE OF DIRECTLY INDUCING OTHERS TO COMMUNICATE TO CONGRESS

Congress enacted the Federal Regulation of Lobbying Act because it had found, over a long period of time, that its ability to determine the public will, with respect to particular legislative issues, was distorted by the fact that what appeared to be legitimate expressions of the views of individuals or groups, with various apparent interests, turned out on closer inspection to be views that those expressing them were hired, pressured, or seduced to take. Congress did not believe that it could effectively perform its legis-

lative function without being able to determine, with as little distortion as possible, what were the true components of the public will and what was the source of the facts and information brought to its attention.

Two basic techniques were adopted to accomplish these purposes. One was to require those who were hired to communicate to Congress to state by what authority and at whose financial instance they acted. That is the gist of Section 308 of the Act, which we discuss below (*infra,* pp. 58 ff.). But because the history of the problem showed that identification of the paid lobbyist solved only part of the difficulty, Congress also devised a mechanism for disclosure by the direct lobbyist's financial supporters of their efforts to affect legislative operations. Sections 305 and 307 fulfill that function.

In this Point, we show that those sections are clearly designed, at the very least, to require disclosure by those who collect or spend money for the specific purpose of causing other people to communicate directly with members of Congress. That is the express charge levied against Moore, Harriss, and the Farm Committee, under Sections 305 and 307.

1. *The language of the Act*

Section 305 of the Act provides that:

> Every person receiving any contributions or expending any money for the pur-

> poses designated in subparagraph (a) or (b) of section 307 shall file * * * a statement * * *.

Section 307 provides that:

> The provisions of this title shall apply to any person * * * who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:
>
> (a) The passage or defeat of any legislation by the Congress of the United States.
>
> (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

It is clear that on its face this language comprehends, and must have been intended to comprehend, those who pay others to state their views to Congress or Congressmen with respect to particular legislative matters; it also covers those who spend money in the course of inducing others to contact Congressmen with respect to legislative matters.

Obviously, such conduct may aid in the accomplishment of the passage or defeat of legislation by the Congress; or, if more remote from a specific vote on legislation, such conduct may influ-

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ence its passage or defeat. The Congressional testimony, for example, of the defendant Linder, an agricultural official of the State of Georgia, that certain legislation would adversely affect agricultural income in Georgia, might well "influence" a legislator in the sense that it might cause him to shift his view or his vote for or against the legislation. The same is true of speeches or talks to Congressmen at dinners or in their offices, as well as of written communications mailed or delivered to them. Nothing would seem to be clearer than that a statute called the "Federal Regulation of Lobbying Act" (*infra*, p. 89) would cover at least those activities which this Court, at its last term, called the "commonly accepted sense" of "lobbying," *i. e.*, representations made directly to the Congress, its members, or its committees. *United States* v. *Rumely*, 345 U. S. 41, 47. Subparagraphs (a) and (b) of Section 307 must have that scope as a minimum, and Section 305 must deal with those who expend or contribute money for such activities.

Not all efforts will, however, be quite so immediate. An avalanche of letters directed at a Congressman in favor of or against a particular piece of legislation may cause him to draw some conclusion about community feeling with respect to a legislative issue, and this conclusion will affect (*i. e.*, "influence") his vote, or his speech on the floor, or conferences with colleagues, and thereby the passage or defeat of legislation. In

such a case, the effort of the opinion-influencers to mold Congressional opinion through the medium of requests to people to write letters is one step removed from direct contact, but it is at least an "indirect" attempt to influence legislation, which Section 307 (b) also covers. The making of representations to Congress, which is the traditional core of lobbying, is both sought and intended by those who urge the sending of letters, and the letters constitute the representations they desire. The purpose of such people is clearly to "influence" "the passage or defeat" of legislation through direct communication with the legislators.

2. *Legislative history*

a. *The 1946 Act.*—Congressional explanation of the Lobbying Act at the time of its passage in 1946 was fairly sketchy. Nonetheless, that history shows that conduct like that charged against the defendants, conduct which is calculated to cause a direct and almost immediate impact on Congress, was within the purpose of the Act.

The Lobbying Act was enacted as part of the much broader Legislative Reorganization Act of 1946. That broader Act was reported to Congress by the Joint Committee on the Organization of Congress which had been authorized by concurrent resolution to "make a full and complete study of the organization and operation of the Congress of the United States and * * * recommend improve-

ments in such organization and operation with a view toward strengthening the Congress, simplifying its operations, improving its relationships with other branches of the United States Government, and enabling it better to meet its responsibilities under the Constitution." H. Con. Res. 18, 79th Cong., 1st Sess., 59 Stat. 839.

After hearings, the Joint Committee issued identical House and Senate Reports (H. Rep. 1675, 79th Cong., 2d Sess.; S. Rep. 1011, 79th Cong., 2d Sess.) in which it was stated (at p. 26 of both reports) that:

> Your committee heard many complaints during its hearings of the attempts of organized pressure groups to influence the decisions of Congress on legislation pending before the two Houses or their committees.
>
> We fully recognize the right of any citizen to petition the Government for the redress of grievances or freely to express opinions to individual Members or to committees on legislation and on current political issues. However, mass means of communication and the art of public relations have so increased the pressures upon Congress as to distort and confuse the normal expressions of public opinion.
>
> A pure and representative expression of public sentiment is welcome and helpful in considering legislation, but professionally inspired efforts to put pressure upon Congress cannot be conducive to well considered legislation.

This language shows that Congress intended to deal, at the least, with those efforts which were designed to result, directly and immediately, in people talking or writing to Congress. The right to express opinions to Congress and its committees is unquestioned by the Joint Committee, but it speaks of the problem raised by "mass means of communications and the art of public relations." One who pays another to talk to Congress, or who specifically requests that others talk to Congress, is plainly within this explanation of the problem with which the Committee was to deal.

Both the Senate report and the House report (issued only in preliminary form) on the Reorganization Act (S. Rep. No. 1400, 79th Cong., 2d Sess., p. 27; Committee Print of H. Rep. on Legislative Reorganization Act of 1946, 79th Cong., 2d Sess., pp. 32–33) declare that the Regulation of Lobbying title applies "chiefly to three distinct classes of so-called lobbyists":

> First. Those who do not visit the Capitol but initiate propaganda from all over the country, in the form of letters and telegrams, many of which have been based entirely upon misinformation as to facts. This class of persons and organizations will be required under the title, not to cease or curtail their activities in any respect, but merely to disclose the sources of their collections and the methods in which they are disbursed.

Second. The second class of lobbyists are those who are employed to come to the Capitol under the false impression that they exert some powerful influence over Members of Congress. These individuals spend their time in Washington presumably exerting some mysterious influence with respect to the legislation in which their employers are interested, but carefully conceal from Members of Congress whom they happen to contact the purpose of their presence. The title in no wise prohibits or curtails their activities. It merely requires that they shall register and disclose the sources and purposes of their employment and the amount of their compensation.

Third. There is a third class of entirely honest and respectable representatives of business, professional, and philanthropic organizations who come to Washington openly and frankly to express their views for or against legislation, many of whom serve a useful and perfectly legitimate purpose in expressing the views and interpretations of their employers with respect to legislation which concerns them. They will likewise be required to register and state their compensation and the sources of their employment.

The generally unsatisfactory debate on this measure in the Senate and House shows the same understanding. Senator La Follette, who was Chairman of the Joint Committee on the Organization of Congress, stated at the outset of the

debate in the Senate on this phase of the reorganization bill [92 Cong. Rec. 6367–6368]:

* * * * *

Mr. President, in the last analysis the Congress is the center of political gravity under the Constitution, because it reflects and expresses the popular will in the making of national policy.

In recent years in particular, and to a growing extent, the true attitude of public opinion has too often been distorted and obscured by pressures of special-interest groups. Every Senator and Representative has been on the receiving end of this type of public pressure. *Organized campaigns of one kind and another are daily reflected in the telegrams, letters, and other communications which are received in the office of every Senator and every Representative. Therefore, your committee has come to the conclusion that the time has arrived when the Congress must take action,* not in any way, shape, or manner to contravene or to reduce the right of petition which is guaranteed to the citizens of this Republic by the Constitution, but in order that there may be a public record of the activity of those pressure groups. We have recommended, therefore, and there is contained in this measure, a provision for the registration of persons using their influence upon the Congress.

* * * * *

> * * * the title applies chiefly to three distinct classes of so-called lobbyists:
>
> First. Those who do not visit the Capitol, but initiate propaganda from all over the country in the form of letters and telegrams, many of which have been based entirely upon misapprehensions or misinformation as to the facts.
>
> I am sure every Senator has had the same experience I have had on occasion of writing to persons who have responded to this type of suggestion, sending them a copy of the proposed legislation, and asking them for their comments. After they have read the measure, it is discovered that the telegram or letter was written perfectly innocently by the citizen or the organization without proper information as to the true legislative intent of the measure then pending.

At this point, Senator White interrupted Senator La Follette to say [92 Cong. Rec. 6368]:

> Of course, it is everlastingly true that, unless Members of the Senate and the House of Representatives are able to know who is appealing to them, they never are able properly to evaluate what is said to them or what is written to them. *It is absolutely essential, if we are to give the proper weight to whatever comes to our ears or our desks, that we shall know who are the people and what is the interest of the people who are making their representations to us.*

And later still, Senator McClellan, after quoting the language of the Report stating that the Act applied to those lobbyists "who do not visit the Capitol but initiate propaganda from all over the country in the form of letters and telegrams * * *," stated [92 Cong. Rec. 6552]:

> The provision may have a wholesome purpose. I do not know whether it can be restricted to that one purpose. One of the purposes is to try to reach those who spend large sums of money for broadcasting, buying radio time, or sending out literature which usually winds up with the request, *"Be sure to write your Congressman or Senator to oppose H. R. ——," or to support a certain Senate bill.* There is a great deal of such activity. I doubt if there is any Senator who cannot sense the propaganda and pressure type of mail, even before he opens the envelope. It is not difficult. I know the people of my State well enough so that when I receive a letter I can usually tell from the opening sentences whether the letter was inspired by the head of some organization, or by some of the propaganda which is continually being sent out over the channels of the air by commentators and others who spend a great deal of their time criticizing the Congress and trying to bring it into disrepute. * * *
>
> * * * *I believe there should be some regulation of the professional propagandists who are always trying to agitate the people and stir them up to write their*

> *Senators and Representatives on many subjects.* These professional propagandists are motivated purely from a selfish or personal standpoint, or because they are paid for their activity. * * * [Emphasis added throughout.]

There was, in short, ample indication to those who voted in support of the Lobbying Act in 1946 that the words "to influence the passage or defeat of legislation" were meant, at the least, to apply to the situation where expenditures were made for programs explicitly designed to induce others to contact Congress, and, *a fortiori,* where people were paid or hired to state the views of others to members of Congress. There is no doubt that the Act was intended to reach at least that kind of lobbying activity.

b. *The 1936 proposals.*—The Lobbying Act passed in 1946 had as progenitors some proposed pieces of legislation introduced about ten years earlier in the 74th Congress. See Futor, *An Analysis of the Federal Lobbying Act* (1949), 10 Fed. Bar. J. 366, 375 ff. Like the 1946 law, the history of the earlier proposals shows that, although the bills may have had a broader scope, the drafters certainly intended to cover those who, as defendants here, either paid people to communicate to Congress, or spent money in an express attempt to induce others to talk or write to Congress.

The first draft of the 1936 legislation,[12] which was introduced in the House as H. R. 11223, was deliberately based on the Federal Corrupt Practices Act, 43 Stat. 1070, which required the disclosure of contributions and expenditures of "any committee, association, or organization which accepts contributions or makes expenditures for the purpose of *influencing or attempting to influence* the election of candidates or presidential or vice presidential electors * * *" [emphasis supplied]. (The constitutionality of this Act had been sustained in *Burroughs and Cannon* v. *United States,* 290 U. S. 534.)

The proposed lobbying legislation stated as the controlling purposes, in language not materially different from that now used:

> (a) The enactment or defeat of any legislation or appropriation by the Congress of the United States or the repeal or nonrepeal of any existing laws of the United States, or adoption or defeat of any amendment to the Constitution of the United States.
>
> (b) To influence directly or indirectly the passage or defeat of any legislation or appropriation by the Congress of the United States.

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[12] S. 2512, passed by the Senate in May 1935 (79 Cong. Rec. 8304–8306), dealt with those who engaged themselves for pay or other consideration to attempt to influence legislation, and was thus a parent of Section 308 of the 1946 Act. See *infra*, pp. 58 ff.

This earlier bill, unlike the 1946 legislation, was not the product of a general attempt to overhaul the functioning of Congress. Rather, it resulted primarily from an investigation into activities financed by public utilities in opposition to the Public Utility Holding Company Act of 1935. Consequently, it is fair and proper to read into this and cognate bills a basic purpose to cure the glaring aspects of the lobby campaign that provoked the proposals.[13] While this reveals considerable evidence of a broad purpose to regulate the expenditures of enormous amounts of money to saturate the public with a particular point of view, it reveals also a narrower and specific purpose to regulate those whose efforts were intended to get people to write or talk to Congress. Thus, in the House Committee Report, reporting H. R. 11223 and recommending its enactment, it is stated (H. Rep. No. 2081, 74th Cong., 2d Sess., pp. 2–4):

* * * * *

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[13] In 1935–1936, there was a major investigation of alleged efforts by public utility holding companies to influence legislation regulating holding companies. The Black Committee was designated by the Senate to investigate (S. Res. 165 and 184, 74th Cong., 1st Sess.), and it made an intensive study, including the making of representations to Congress. The study showed, for example, that out of a total of 31,580 telegrams sent to Washington from twenty different towns, all but 13 were filed and paid for by utility company agents, almost invariably without consent of the person whose name was used. Hearings before the Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 1st and 2d Sessions, and 75th Cong., 3d Sess., pp. 1014–1015.

The companies acting in concert sought to bring home to utilities investors and employees, and to the public generally, the purport and consequences of this legislation as the companies saw them. The means used were telegrams, articles, letters, circulars, advertisements, and every form of communication practicable. *Coupled with this county-wide dissemination of publicity were appeals that whoever agrees with the position of the companies communicate his attitude to his Representative in Congress.* Field agents everywhere urged such actions. In many instances facilities were afforded and expenses paid for sending such communications.

* * * * *

Ordinarily, the right of executives of corporations to keep their investors informed when in their judgment the value of their securities is imperiled, as well as the right of the investors to protest to their Representatives in Congress is without question.

But this was no ordinary instance. The committee is of the opinion that *to unloose upon Congress* a highly charged avalanche or propaganda is unwholesome and inimical to the public interest. It seeks to impress upon the membership the sense of a popular uprising, when in fact it is an artificial product. * * *

* * * * *

This Committee believes that every American citizen and interest that may be

> affected by proposed legislation has the highest right and privilege to be heard—a right that should be neither denied nor abridged. But on the other hand, the membership of Congress, to whom appeal *is made and upon whom it is sought to exert pressure* and the public likewise appealed to, and *who is asked to exert that pressure,* have a right to know by whom and in whose interest such appeals are made, by whom these movements are financed, and the manner in which money is expended. * * * Likewise, when legislators are approached upon any question they are entitled to know by whom, for whom, and under what exact circumstances. * * * [Emphasis added.]

H. R. 11223 was carried over into H. R. 11663, which was twice debated by the House, first in its original "narrow" form and later as broadened by the Senate and the Conference Committee.[14] On both occasions, there was an authoritative declaration that the bill applied to those who caused letters and similar communications to be sent to Congress. Representative Smith, the

[14] H. R. 11663 was first passed by the House in March 1936. 80 Cong. Rec. 4541. Without significant debate, the Senate substituted its own bill by way of amendment. 80 Cong. Rec. 4969–4970. The Conference Committee proposed the so-called "broad" version of H. R. 11663. This was rejected by the House in June 1936. 80 Cong. Rec. 9430–9434, 9743–9753.

sponsor, said during the first debate (80 Cong. Rec. 4525):

> One class [affected by the bill] will be those people who sit at home and raise great funds to flood Congress with false propaganda; people who cause telegrams and letters to be sent to you and to me to try to make it appear to us that there is a great surge of public sentiment for or against a certain measure proposed here.

Similarly, Mr. Smith stated on the second occasion (80 Cong. Rec. 9750–9751):

> This bill * * * originated with the utility investigation. It was aimed at the utility lobby which was investigated by the Rules Committee, of which I was a member.
>
> * * * * *
>
> The bill was framed principally to curb the growing evil of organized attempts to influence legislation by the stimulation of false propaganda designed thru avalanches of inspired letters and telegrams to impress upon Members of the Federal Congress that a great surge of public sentiment exists for or against the passage of proposed legislation.

These indications of Congressional purpose in 1936 are especially significant because the terms of the 1946 Act were substantially taken from the earlier bills. See Futor, op. cit. *supra,* pp. 374–380; H. Rep. No. 3239, 81st Cong., 2d Sess.,

pp. 17–20 (the Buchanan Committee's Report and Recommendations on the Federal Lobbying Act).[15]

B. THE SECTION 305 COUNTS CHARGE THAT THE DEFENDANTS PAID OTHERS TO MAKE REPRESENTATIONS ON THEIR BEHALF TO CONGRESS OR ATTEMPTED TO INDUCE OTHERS TO COMMUNICATE WITH CONGRESS

We have set out in the Statement the allegations of the information in some detail (*supra*, pp. 4–12) because we think they show that the great bulk, if not all, of the charges against the defendants relate to two general classes of acts: (1) paying others to talk directly to Congress or Congressmen, and (2) attempting to induce others, by non-financial inducements, to communicate with Congress, usually by letter. In each instance, the representation was made with respect to the merits or demerits of pending legislation affecting the prices of agricultural commodities, but without disclosure of the defendants' private financial interest. Although the form of the statute requires the Section 305 counts to be framed in terms of specific expenditures, or receipts, in specific quarters of the year, it is nonetheless true that the basic nature of the defendants' efforts to affect legislation, as

[15] Representative Smith's statement, in 1936, of the three classes of persons to be covered by the then lobbying bill (80 Cong. Rec. 4525) is virtually identical with that given by both the Senate and the House reports on the 1946 Act. See *supra*, pp. 31–32.

charged in this information, clearly falls into the pattern we have stated.[16]

1. Thus, counts II, III, IV, and V, the Section 305 counts against defendant Moore, charge expenditures for the principal purpose of aiding "in influencing, * * * the passage of legislation * * *" by (1) sponsoring activities of three farm associations, The Southern Commissioners of Agriculture, the Farm Commissioners Council, and the North Central States Association of Commissioners, Secretaries and Directors of Agriculture, each of which in turn "had as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture"; (2) by procuring the services of the defendants, James E. McDonald and Tom Linder, who had been identified as the Com-

[16] The Act does not in terms state the amounts necessary to be contributed or spent to result in coverage. But it must certainly be true that it was not intended to cover minimal amounts, since such contributions or expenditures obviously would not have significance in terms of the purposes of the Act. The Clerk of the House of Representatives, in preparing his Outline of Instructions for Filing Reports, Federal Regulation of Lobbying Act (1951), placed the minimum amount which would require compliance with the Act at $100 per year. This figure was used as a result of a Report by the House Select Committee on Lobbying Activities (the Buchanan Committee), H. Rep. No. 3239, 81st Cong., 2d Sess., pp. 15–16. The new forms for reporting and registration, adopted by the Clerk of the House and the Secretary of the Senate in 1950, have simplified compliance with the Lobbying Act. See H. Rep. No. 3239, 81st Cong., 2d Sess., p. 5.

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missioners of Agriculture of Texas and Georgia, respectively; and (3) by procuring the services of one Carl H. Wilken, who was apparently an agricultural expert and who testified for defendants before Congressional committees (R. 5–6).

In addition to these allegations, common to the four Section 305 counts against defendant Moore, there are allegations respecting particular expenditures in particular quarters which Moore failed to report. These particular expenditures are the immediate basis for the charge of failing to report, as required by Section 305.[17] In count II, these items related to payments, in the amount of $2,250, to defendant Linder, and, in the amount of $250, to one McCloskey, who appears from the information to have written letters to Grange officers at Moore's instance, urging them to write their Congressmen to put peas in the program for foodstuffs to be sent to Europe under the European Recovery Program (R. 5), and also to have written statements, also at Moore's instance, for presentation to Congress (R. 5) (although it does not appear on the face of the information that this payment was specifically related to these letters and statements).

In count III, the specific expenditure was a payment to the Mayflower Hotel for a dinner, in

[17] Through a typographical error, paragraph 11 of count II (R. 8) refers back to paragraph 9 instead of paragraph 10.

the amount of $1,100 (R. 9). From allegations elsewhere in the information (R. 5), it may reasonably be inferred that this was a dinner which was ostensibly sponsored by one of the defendants' farm associations, and at which Congressmen were spoken to about farm legislation.[18]

In count IV, the specific expenditures were deposits of three separate sums of $3,000, $4,500, and $3,600 in brokerage accounts of the late defendant McDonald, of one Harold B. McDonald, of Texas, and of Ruth Aspinwall (not otherwise identified), presumably as part of the program of securing the good offices of McDonald, a Texas state official, and those of the person for whom Aspinwall acted, in having representations made to Congress.

In count V, the specific expenditures were many, but they included (1) a printers bill for preparing and sending out a press release on behalf of the Association, Southern Commissioners and Directors of Agriculture in which a hearing was requested before the Senate Committee on Agriculture on the specific proposed legislation; (2) a payment to one Hanson in respect to a news

[18] A comparison of paragraphs 11 (c), (d), and (e) on R. 5 with paragraph 2 (a) on R. 9 and paragraphs 2 (d) and (e) on R. 12 indicates that the hotel referred to in count III should be the Raleigh Hotel, not the Mayflower. This and other errors can be corrected on remand. See *United States* v. *Petrillo*, 332 U. S. 1, 11.

item in the Washington Post, 531 copies of which were sent to members of Congress; (3) payments and a loan to Wilken, who is elsewhere identified as having testified before Congressional committees at Moore's instance (R. 5–6), in the total sum of $6,750; and (4) payments to the Mayflower Hotel, in the sum of $5,945.99, for dinners at which Congressmen were spoken to on agricultural legislation (see R. 5).

2. Similarly, in counts VI and VII, the Section 305 counts against defendant Harriss, it is first generally alleged that Harriss expended money "principally to aid in influencing * * * legislation * * *" affecting the prices of agricultural commodities and commodity futures; and that he did so by procuring the services of defendants Moore, McDonald, and Linder (whose activities are described elsewhere in the information). And in count VI it is charged that he made specific expenditures to various persons, including Linder, Hanson (see *supra*, pp. 45–46), one Lois Moore, one Matt Dahl, the National Farm Committee, and to Richard Tullis, identified as an officer of the National Farm Committee, in each case in amounts of $250 or larger. In count VII, payments to defendant Moore, in the total amount of $50,000, and to defendant McDonald, in the amount of $6,000, are alleged. From other allegations in the information, it can be assumed that these expenditures related to the procuring

of direct representations to Congress on agricultural matters.[19]

3. Finally, in count X, the remaining Section 305 count, it is alleged that defendant National Farm Committee, whose principal purpose was to influence the passage of legislation which would cause a rise in the price of agricultural commodities and commodity futures and the defeat of legislation which would cause a fall in such prices, had solicited, collected and received from the defendant Harriss the sum of $1,000 for carrying out its purposes.

* * * * *

Realistically read in the context of the whole information, it is clear that the substance of the 305 charges against defendants Moore and Harriss is that they paid individuals and groups to communicate with Congress, in various ways, on their behalf, and that this was deliberately done without disclosure of the true nature of the pecuniary backing or the identity of the sponsors or their private financial interests.[20] It is plain, also,

[19] No bill of particulars was sought by the defendants. See *United States* v. *Petrillo*, 332 U. S. 1, 10–11.

[20] Paragraph 6 of count I, which is expressly incorporated into all the other counts, declares that the "defendants well knew and intended [that] the members of the Congress would not know that such activities, plans, schemes and designs of the defendants and such use and employment of these several organizations were in fact based upon and in pursuance of the defendants' purpose to advance their personal financial interests; and, as to the defendants Tom

that the means of communication took the form of releases directed at Congress, testimony before Congress and its committees, the more subtle blandishment of after dinner speeches to Congressmen, or, finally, the encouragement of letters to Congress. With respect to the National Farm Committee, the substance of the charge is that the Committee received money, for the purpose of taking positions on farm legislation which would "directly" influence the passage of favorable farm legislation, from Harriss, the motivation of whose interest in that type of legislation did not coincide with that of a public nonprofit agricultural group such as the Committee appeared to be.

These charges are all provable, within the meaning of the statute, by showing facts which would go no farther than we have shown is appropriate in subsection A of this Point of the Argument (*supra,* pp. 25–42). The lobbying activities with which the information deals all involve direct representations to Congress or the express inducement of such representations.[21]

Linder and James E. McDonald, that the members of the Congress would be unaware that they were acting outside of and apart from their capacities as state officials instead of making unbiased efforts to further the interests of persons engaged in agricultural pursuits and of other members of the public" (R. 3).

[21] There is no prohibition in the Criminal Appeals Act on this Court's construing an indictment or information in connection with a determination of constitutional or statutory issues, so long as the Court does not go counter to a construc-

C. THERE IS NO UNCONSTITUTIONAL VAGUENESS IN SECTIONS 305 AND 307 AS APPLIED TO DIRECT COMMUNICATION WITH, OR INTENTIONAL STIMULATION OF DIRECT COMMUNICATION WITH, CONGRESS

As we have shown (*supra,* pp. 25–42), the language and legislative history of Sections 305 and 307 make it plain that they were intended, at the least, to apply and they do apply to persons who pay others to state views to Congress, whether formally in committee sessions, or informally in speeches, letters, etc., so long as the statements are directed at Congress or Congressmen. It is also clear that the sections apply to those who spend money to induce others directly to communicate with Congress, such as the sponsors of campaigns asking members of the public to write or contact their Congressmen with respect to particular legislation. We have also shown (*supra,* pp. 42–48) that the activities charged in this information fall within these bounds of direct communication.

Thus applied, the Act presents no serious question of indefiniteness, in appraising which "the particular context is all important." *American*

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tion of the indictment or information made by the District Court. See *United States* v. *Congress of Industrial Organizations*, 335 U. S. 106, 110–112; *United States* v. *Petrillo*, 332 U. S. 1. If the Court should feel, however, that any part of the information is not sufficiently definite for the purposes of constitutional adjudication, *United States* v. *Petrillo*, 332 U. S. 1, 9–13, shows that the case can be remanded without determination of the issues relating to that portion of the information.

Communications Assn. v. *Douds,* 339 U. S. 382, 412.[22] The necessity that there be direct contact with Congress, whether paid for or expressly stimulated, imports a sufficient degree of specificity. Certainly, no one who paid money to have another present views to Congress or who spent money to stimulate persons to write to their Congressmen would be in any doubt that his conduct came within the terms of a statute which covers a purpose "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States." Activities of that type—as *United States v. Rumely,* 345 U. S. 41, 47, now underlines—are the traditional heart of lobbying and legislature-influencing, and would plainly be governed by a "Regulation of Lobbying Act." The coverage is indisputable in this instance, but, even if it were more doubtful, it would not be "unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line" *Boyce Motor Lines* v. *United States,* 342 U. S. 337, 340.

For this aspect of the case, it is perhaps not necessary to go beyond the decision in *United States* v. *Wurzbach,* 280 U. S. 396, where the Court sustained, on direct appeal, an act which

[22] As we point out in detail *infra,* pp. 81 ff, the presence of difficult, borderline or peripheral cases does not invalidate a statutory provision where there is a hard core of circumstances to which the statute unquestionably applies.

made it unlawful for any Congressman, or candidate for Congress, or officer or employee of the United States "to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution *for any political purpose whatever,* from any such officer, employee, or person." [Emphasis supplied.] The indictment charged a Congressman with having received money from federal officers and employees for the political purpose of promoting his nomination as Republican candidate for representative at certain Republican primaries. The Court thought that the "language is perfectly intelligible and clearly embraces the acts charged." 280 U. S. at 398. It was argued that the statute was invalid, among other reasons, because there was no definite meaning to the crucial words "political purposes." However, the Court, in an opinion by Mr. Justice Holmes, said, at p. 399:

> * * * But we imagine that no one not in search of trouble would feel any. Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States,* 229 U. S. 373.

Cf. *Burroughs and Cannon* v. *United States,* 290 U. S. 534 (Federal Corrupt Practices Act).

As sought to be applied to the present defendants, the Regulation of Lobbying Act is also at least as definite as several other statutes upheld by this Court. In *Boyce Motor Lines* v. *United States,* 342 U. S. 337, the defendant was required to determine whether there was a truck route available which made it possible to avoid "congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts, and dangerous crossings"; if so, it then became necessary to determine whether the alternative route was "practicable" and "feasible." Other statutes have required those covered to decide whether sound trucks are "loud and raucous" (*Kovacs* v. *Cooper,* 336 U. S. 77, 79); whether competitive activities are "fair and open" (*Old Dearborn Co.* v. *Seagram Corp.,* 299 U. S. 183); whether sheep are interfering with the "usual and customary" use of a range (*Omaechevarria* v. *Idaho,* 246 U. S. 343, 348); whether activities are "reasonably calculated" or "tend" to fix prices (*Waters-Pierce Oil Co.* v. *Texas* (*No. 1*), 212 U. S. 86); whether a fire is "near" the public domain (*United States* v. *Alford,* 274 U. S. 264); whether income tax deductions are for "a reasonable allowance for salaries or other compensation for personal services actually rendered" (*United States* v. *Ragen,* 314 U. S. 513); whether one is coercing an employer to employ persons in excess of the number "needed" (*United States* v. *Petrillo,* 332 U. S. 1); or whether a crime in-

volves "moral turpitude" (*Jordan* v. *De George*, 341 U. S. 223). See also *United Public Workers* v. *Mitchell*, 330 U. S. 75, 103–104 (Hatch Act: "active part in political management or in political campaigns"). Men can constitutionally be required to make these determinations, each of which involves a general standard of considerable latitude.[23]

The Lobbying Act, as applied here, makes no greater demands on those who come within its compass, for a very specific and easily foreseeable content has been given to the general terms of the statute. In addition, the requirement of a deliberate purpose to influence federal legislation relieves the Act of the basic "objection that it punishes without warning an offense of which the accused was unaware". *Screws* v. *United States*, 325 U. S. 91, 102.[24] With the specific subordinate standard applicable here and this element of *scienter*, there can be no entrapment of the innocent or the unwary.

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[23] For other cases, see *American Communications Assn.* v. *Douds*, 339 U. S. 382, 412–3; *Dennis* v. *United States*, 341 U. S. 494, 515; *Screws* v. *United States*, 325 U. S. 91; *Williams* v. *United States*, 341 U. S. 97; *Gorin* v. *United States*, 312 U. S. 19; *Nash* v. *United States*, 229 U. S. 373; *Miller* v. *Strahl*, 239 U. S. 426, 434; *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 17–18; *Sproles* v. *Binford*, 286 U. S. 374, 392–3.

[24] See *American Communications Assn.* v. *Douds*, 339 U. S. 382, 413; *Dennis* v. *United States*, 341 U. S. 494, 515; *Boyce Motor Lines* v. *United States*, 342 U. S. 337, 342; *Gorin* v. *United States*, 312 U. S. 19, 27–28; *United States* v. *Ragen*, 314 U. S. 513, 524; *United States* v. *Wurzbach*, 280 U. S. 396, 399; *Omaechevarva* v. *Idaho*, 246 U. S. 343, 348.

D. THE "PRINCIPAL PURPOSE" REQUIREMENT OF SECTION 307 HAS SUBSTANTIAL APPLICATION ONLY TO DEFENDANT NATIONAL FARM COMMITTEE AND ITS APPLICATION TO THAT DEFENDANT IS CLEAR

Section 307 of the Lobbying Act states, in part, that:

> The provisions of this title shall apply to any person * * * who * * * directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:
>
> * * * * *

The District Court in the *N. A. M.* case held that the reference to "principal purpose" was so vague as to be meaningless. See 103 F. Supp. 510, 514. Presumably, the court's reference in this case to the *N. A. M.* holding (R. 39) means that the alleged indefiniteness of the "principal purpose" language was also thought to be present here.

1. Actually, however, the "principal purpose" aspect of Section 307 has little to do with this case. Section 307 refers to any person who "solicits, collects, or receives money" to aid, or "the principal purpose of which person is to aid," in the influencing of legislation. The reporting requirements of Section 305, however, apply not only to persons soliciting but also to those "expending any money for the purposes designated in subparagraph (a) or (b) of section 307," *i. e.*, the purposes of influencing legislation. Thus, the

"principal purpose" language of Section 307 would appear to have no application to those making *expenditures* (as distinguished from those receiving *contributions*) for the purpose of influencing legislation. In the instant case, all of the Section 305–307 counts, with the exception of count X against the National Farm Committee, are predicated on the fact that "expenditures" were made for the purposes designated in Section 307, and not on the fact that some person had "solicited, collected, or received" funds for those purposes. All that it seems necessary to prove is that the expenditures were actually made for the purposes set forth in subparagraphs (a) or (b) of Section 307.

2. If the "principal purpose" language does apply to "expenditures" as well as "contributions," the statute poses no problem whatever as to defendants Harriss or Moore. The "principal purpose" requirement is worded alternatively. It suffices to bring a person under the Act if either (i) that person's principal purpose is "to influence" federal legislation, or if (ii) that is the principal purpose of the contribution itself, or of the expenditure itself (if the latter is to be included).[25] However great a problem it may be

[25] The language of Section 307 is "The provisions of this title shall apply to any person * * * who * * * directly or indirectly, solicits, collects, or receives * * * *any* * * * *thing of value to be used principally to aid, or the principal purpose of which person is to aid* * * *." [Emphasis added.]

to determine the principal purpose of a person, there is usually little difficulty in determining whether the principal purpose of a specific contribution or expenditure is to accomplish one of the statutory purposes. In this case, specific expenditures are listed, and it is charged that their principal purpose was the affecting of designated legislation. This raises a precise issue capable of proof or disproof in ordinary course, just as if the inquiry was solely as to the "purpose" (unqualified by the adjective "principal") of the expenditures. See *United States* v. *Wurzbach,* 280 U. S. 396 (discussed *supra,* pp. 50–51); *Burroughs and Cannon* v. *United States,* 290 U. S. 534.

Consequently, with respect to all the Section 305 counts, except that against the National Farm Committee, the short answer to the court below is that the "principal purpose" requirement is either inapplicable or it is met easily and without any doubt.

3. Count X, against the National Farm Committee, does allege that that organization, which was one whose principal purpose was to influence legislation, received money to be used principally to aid in the passage and defeat of legislation relating to agricultural commodities; specifically, the charge is that it received a check for $1,000 from Harriss for the purpose of influencing and attempting to influence such legislation. Irrespective of the "principal purpose" of the organization, the count charges a violation of Sec-

tions 305 and 307 under the alternative requirement of Section 307 that reports be made by persons receiving contributions principally to aid the accomplishment of the purposes specified in Section 307. And it is clear that the specific contribution which is alleged in count X was a single-purpose contribution—that the one purpose was to influence the passage or defeat of legislation which would, respectively, enhance or depress farm prices.

For the present case it is enough that the information charges that the contribution was obtained for the purpose of influencing legislation.[26] The statute is definite and explicit enough to inform a person receiving money for such a purpose that he is within its terms. The "principal purpose" language of Section 307 (pp. 54–55, *supra*) is designed to make clear that the fact that the contributions are multi-purposed will not necessarily preclude coverage under the Act. Cf. Futor, *An Analysis of the Federal Lobbying Act* (1949), 10 Fed. B. J. 366. Where contributions have several purposes, the qualifying word "principal" may possibly raise problems, but no problems of indefiniteness are presented where, as in this case, contributions are obtained solely for the purpose of influencing legislation, particularly

[26] The additional allegation that the principal purpose of the Farm Committee was to influence the passage or defeat of legislation does not appear in the operative paragraphs of count X, *i. e.*, paragraphs 6 and 7.

when "influencing" is interpreted, as discussed above (*supra*, pp. 25–42), to mean acts of directly contacting or stimulating direct contact with Congress. The National Farm Committee cannot properly complain of any vagueness in the charge against it in this information.[27]

II. SECTION 308 OF THE ACT IS NOT UNCONSTITUTIONALLY INDEFINITE AS APPLIED TO THE COUNTS LAID UNDER THAT SECTION

A. *As applied to those who are hired either to express views to Congress or to cause others to do so, Section 308 is sufficiently definite.*—The Dis-

[27] In the court below, defendants also contended that the statutory definition of "legislation" in Section 302 (*infra*, pp. 89–90) is too vague because it includes—in addition to "bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress"—"any other matter which may be the subject of action by either House." Like so many of defendants' arguments below, this contention has no place in this case, for the information makes it quite clear that it uses the term "legislation" in the ordinary sense of bills and legislative proposals already being, or just about to be, considered by Congress, its committees, or its members. See, especially, paragraphs 1 through 8 of count I (R. 1–4), which are incorporated into the other nine counts. Whatever may be the difficulties in other circumstances with the phrase defendants attack, there are no real problems here, particularly since the charges concern direct or stimulated contact with Congressmen. We may point out in passing, however, that the critical phrase, "which may be the subject of action by either House," can be read as referring to "other matters" which "are" being considered by Congress, its organs, or its members, or which "are" being presented at that time to some member of Congress. The statute would not appear to cover matters merely being debated in the schools.

trict Court did not hold Section 308 unconstitutionally vague. It held Section 308 unconstitutional because the penal provision of Section 310 (b) was unconstitutional, and because Sections 308 and 310 (b) were thought to be inseparable. We discuss this separability problem in Point IV, *infra,* pp. 75–80.

The defendants argued below, however, that Section 308 was unconstitutionally vague (a) because it could not be determined what was meant by "influencing" legislation as defined in the statute, and (b) because Section 308, although self-sufficient on its face, seems inconsistent with Section 307 which states the persons to whom the Act is applicable. We have already discussed the meaning of "influencing" legislation, and have shown that at the minimum it covers direct communication with Congress and the intentional stimulation of direct representations. *Supra,* pp. 25–42. Like Sections 305 and 307, Section 308 is not too indefinite to govern this case.

Section 308 does not refer to Section 307 and is not governed by it. Section 308 covers one "who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States." There is nothing mysterious about the concept of hiring oneself out to do a job, and the language "engage himself for pay or for any consideration" plainly embraces that notion.

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The history of the legislation shows that the provisions for the registration of paid lobbyists grew out of a different bill from those which sought to require disclosures by groups and individuals who collected moneys for lobbying purposes.[28] There is, therefore, nothing in the legislative history which requires Section 308 to take on additional requirements from Section 307. But even if the persons described by Section 308 would have also to meet the description of 307, the result would be the same. Section 307 is specifically applicable to those who receive money to be used principally to aid the passage or defeat of legislation. See *supra,* pp. 54 *ff*. Presumably, the receipt of money for lobbying services by a professional lobbyist is the receipt of money principally to aid the passage or defeat of legislation.

The defendants also argued below that Section 308 was unconstitutionally vague because it is "so all embracing in that it requires the person who has engaged himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of legislation 'before doing anything in furtherance of such object' to register" (R. 25). The argument runs that "do-

[28] This provision, now Section 308 of the Act, grew out of S. 2512, 74th Cong., which dealt only with paid lobbyists (see fn. 12, *supra*, p. 37); Sections 305 and 307 of the Act grew out of the major provisions of H. R. 11223 and 11663. See *supra*, pp. 36–42.

ing anything" includes so much that "men of common intelligence must guess at what is really meant shall constitute an offense * * *" (R. 25).

It is plain, however, that the phrase "doing anything" refers to acts done consciously, in exchange for pay or other consideration, in pursuit of the passage or defeat of legislation. The defendants' complaints on this score seem to us to come down to the proposition that Congress cannot require them to distinguish between the positions they take with respect to legislation because they are paid to do so and those positions representing a genuine unsolicited conviction. Not only is this position unsound on its face, but the information further aids defendants by specifying in each instance the acts done by them without registering. See R. 4–6, 20–21.

B. *Defendants Moore and Linder were hired to express views to Congress and to cause others to do so.*—It is clear that counts I and IX charge defendants Moore and Linder with offenses under Section 308. Count I alleges that Moore "engaged himself for pay and for other consideration on behalf of Robert M. Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the prices of agricultural commodities and commodity futures and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agri-

cultural commodities and commodity futures" (R. 4). The count alleges in considerable detail the acts done to carry out this undertaking—the procurement, on various and sundry occasions, of witnesses, private individuals, and southern agricultural associations to take positions before Congress and Congressmen with respect to certain legislation.

As to Linder, it is alleged that he engaged himself "for pay and for other consideration on behalf of the defendants * * * Moore and * * * Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures, and (b) the defeat of legislation by the Congress * * * which would cause a decline [in such prices]" (R. 20). The information also alleges that Linder, "acting outside of and apart from his official capacity, in furtherance of the objects and purposes for which he had theretofore received money and other things of value * * * [helped to organize] the Farm Commissioners Council * * * made a statement before the Senate Committee on Agriculture of the Congress of the United States, using material prepared by one Dr. Clair, opposing proposed legislation which would tend to reduce the prices of farm commodities [and] on or about the fall of the year 1946,

at a dinner alleged to have been sponsored by the Association, Southern Commissioners of Agriculture, staged at the Mayflower Hotel, in Washington, D. C., at which about 200 members of Congress were present, the defendant Tom Linder delivered a speech in which he urged Congress to enact legislation ending the Office of Price Administration controls of prices" (R. 21).

As they are charged, both Moore and Linder were acting to bring pressures to bear directly on Congress, but in such a fashion that Congress had no idea where the sponsorship of their ideas lay. Moore almost consistently spoke through the medium of others. And though Linder talked for himself, he permitted it to be supposed, according to the information (see fn. 20, *supra,* p. 47), that he spoke only as the State Commissioner of Agriculture for Georgia; the charge is that he had a personal, financial stake outside of his job in such a way as to permit the inference that he was being paid to divide his loyalties between Georgia, on the one hand, and his own personal interests as well as those of Moore and Harriss, on the other. It was, partly, to avoid precisely this type of situation that the Lobbying Act was passed. *Supra,* especially p. 32. There is not the slightest reason to suppose that those who were acting as did Moore and Linder could not have determined that the Act required their registration.

III. AS APPLIED HERE, SECTIONS 305, 307, AND 308 OF THE ACT DO NOT VIOLATE THE FIRST AMENDMENT

The District Court did not hold Sections 305, 307, or 308 of the Lobbying Act invalid under the First Amendment, but the defendants strenuously insisted on that contention below. See R. 24, 32, 33, 35. For that reason, we answer it here.[29]

A. The First Amendment guarantees to the defendants, as to all others, the right to petition Congress; and the expression of views to Congress in groups or through agents is admittedly an exercise of the right to petition. But it is equally clear that the right to petition, like other First Amendment freedoms, may be qualified, in certain circumstances, if necessary to protect other interests in the community whose preservation is of sufficient importance. The limitation on the freedom to teach and advocate the idea of forceful and violent overthrow of the Government is only a recent and dramatic example of this point. *Dennis* v. *United States,* 341 U. S. 494.

The problem, then, in the present case is to determine the nature and extent of the restraint, if any, which has been imposed on the defendants'

[29] The Court has apparently held that it has power, under the Criminal Appeals Act, to consider constitutional contentions other than those passed on by the District Court. See *United States* v. *Spector*, 343 U. S. 169, 172; *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 330.

right to petition; and then to determine whether the interest in favor of which the restraint has been imposed can justify a limitation of this type.

The restraint, if it be one, is certainly not a direct or a heavy one. The conduct of those attempting to influence the passage or defeat of legislation is not prohibited or made criminal. They are not forbidden to make their views known or to hold beliefs. It is simply provided that under certain circumstances there must be disclosure of specified *facts;* and disclosure is required, not on the basis that anything improper is being done, but merely as an impartial register of those whose concern with their affairs before Congress is great enough so that they spend, or solicit, money to pay or induce people to make certain kinds of presentations to Congress. There is no choice among differing political opinions and no singling out of selected activities or views for disclosure. All must be reported alike and no stigma is attached to those who register and report.[30]

On the other hand, the interest in favor of which this restraint has been imposed is fundamental to the legislative process. The intricate back-and-forth process between representative

[30] For the most recently published lists of those registering and reporting under the Act, see 99 Cong. Rec. 60 ff. (daily ed.; Jan. 3, 1953), 2881 ff. (daily ed.; April 7, 1953); 6784 ff. (daily ed.; June 15, 1953). There is a wide representation of occupations, professions, organizations, and individuals, both notable and unknown.

and represented, which is the gist of the democratic form of government, has brought forth two central problems with which Congress can rightly concern itself. The first is to ascertain correctly the true will, desires, needs, and hopes of the people as a whole, and of the different groups in the Nation. The other aim is to secure the facts, all the facts, on which to build legislative action. Without both kinds of knowledge, legislation is hobbled and to that extent representative government fails in its exacting goals.[31]

For at least forty years,[32] Congress has been much concerned with the relationship between these two prime ends of opinion-finding and fact-finding, on the one hand, and the individuals, groups, and organizations which seek to encourage or retard Congressional action, on the other. There have been many, inside Congress and out, disturbed by the thought that proper attainment of the two fundamental aims has been partially frustrated by persons with special axes to grind. Congress, in legislation, has an obligation to the general welfare which "is not the mere sum * * *

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[31] The Legislative Reorganization Act of 1946 resulted, of course, from a deep concern with both aspects. It was not accidental that the Regulation of Lobbying Act was part of the Legislative Reorganization Act.

[32] See Lane, *Some Lessons From Past Congressional Investigations of Lobbying*, 14 Pub. Opin. Quar. 14; Brief for the United States, *United States* v. *Rumely*, Oct. Term, 1952, No. 87, pp. 30ff.

of Maine potatoes, Texas oil, Wyoming wool, Colorado silver, Mississippi cotton, and Georgia peanuts." Hearings, House Select Committee on Lobbying Activities, 81st Cong., 2d sess., pt. 1, p. 100. As those interests, and their like, have borne down upon it, Congress has repeatedly undertaken to determine for itself how much it has been subject to pressures only partially representative of the total interest, and how much these pressures have distorted its functioning.

The remedy has not been to silence or prohibit the "interest" or "pressure" groups, but to utilize a measure of factual disclosure in an attempt to remedy the distortion which Congress has found, without forbidding or limiting in any way the expression of ideas. In the present context, there would, of course, be indirect disclosure of the political ideas or actions of some persons whose views or activities may now be relatively private (*e. g.,* defendants Harriss, Moore, and Linder), but only to the extent that they affirmatively engage in attempting to affect federal legislation by communicating to Congress or inducing others to communicate. And such disclosure of these activities and views enables Congress and the public, it is believed, better to appraise the source and true worth of the facts and arguments brought forth, and thus to reach wiser judgments on proposed federal legislation.[33]

[33] In addition to the Federal Government, over twenty states seek to regulate some aspects of lobbying through dis-

The legislative interest is so important and the means adopted for its preservation so moderate that it is difficult to believe that the possible deterrence of some communication with Congress or Congressmen by certain individuals can be the abridgment of freedom which the First Amendment prohibits. This Court and informed opinion have always refused to see illegality in comparable minor "restraints" of this character, where a significant social end was being served by the legislation. Thus, in *Burroughs and Cannon* v. *United States,* 290 U. S. 534, the Court sustained the statute requiring disclosure by those who attempt to influence the outcome of presidential elections by soliciting contributions or making expenditures for that purpose, although it is clear that such a disclosure requirement would cause some to forego support of the candidate of their choice. The Court, in an opinion with major and special relevance to the present problem, both because of the fact that the language of the earlier act was the basis of the present statute and also because of the similarity of the interest involved, stated its view as follows (290 U. S., at 545):

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closure (see Note, (1947) 47 Col. L. Rev. 98, 99–103; Comment (1947) 56 Yale L. J. 304, 313–316). Almost all the states require disclosure of campaign contributions and some also regulate political advertisements and circulars (Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs,* (1948) 47 Mich. L. Rev. 181, 204–206).

> The importance of his [the President's] election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.

Civil and criminal libel and slander law undoubtedly deters some people from communicating ideas which are actually permissible, but which they fear will provoke litigation. But that kind of restraint obviously does not invalidate such laws. Indeed, this Court has recently sustained an Illinois law imposing criminal sanctions on those who publish material which "portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion" or which exposes the citizens of any such group to "contempt, derision, or obloquy * * *"; and this validation was in the face of serious contentions that the proscribed conduct was too vaguely described. *Beauharnais* v. *Illinois,* 343 U. S. 250. The Court did not regard the restraint flowing from the prohibition of the stat-

ute, or that voluntarily operating on its edges upon people who fear getting uncomfortably close to its reach, as sufficient to invalidate the attempt by Illinois to wrestle with the perennially intractable problem of meliorating troubled racial and religious antagonisms.

It is also true that a requirement that holders of second-class mailing privileges disclose their ownership of the publication probably discourages some who have certain views they would like to express in newspapers or periodicals. But this peripheral discouragement is permitted, in part, so that the public may not be "deceived through ignorance of the interests the publication represents." *Lewis Publishing Co.* v. *Morgan,* 229 U. S. 288, 312, quoting H. Rep. No. 955, p. 24.

The existence of the Hatch Act probably deters some federal employees from activity permitted by that statute, and, yet, the national interest in a nonpolitical civil service has sufficed to permit the restraint. *United Public Workers* v. *Mitchell,* 330 U. S. 75. Perhaps, the Smith Act and the sedition statute (*Dennis* v. *United States,* 341 U. S. 494), the non-Communist affidavit provision of the Labor-Management Relations Act (*American Communications Association* v. *Douds,* 339 U. S. 382), and the employer free speech unfair labor practice provisions of the National Labor Relations Act (*National Labor Relations Board* v. *Virginia Elec. & Power Co.,* 314 U. S. 469), have all

had comparable effects on certain individuals. But, in each case, broader interests in the safety and the economic order of the community have made these tangential restraints permissible. Even the prospect of being called as a witness in a proceeding before a court or other tribunal, or of being investigated by a public or private agency, may discourage some people from uttering, even privately, wholly permissible ideas.[34]

In short, there is frequently self "censorship" or self-restraint in expression or communication growing out of, but going beyond, a requirement of law. But the First Amendment has never been thought, for that reason, to invalidate the law or other Government action because of these tangential, voluntary consequences. Caution, timidity, a desire for privacy or to be free from controversy or litigation, may all cause people voluntarily to refrain from expressing their views in order to avoid all chance of incurring some legal sanction—which is not actually imposed on or related to the expression of those views—but it does not follow from this that any law has abridged their First

[34] The National Labor Relations Act (*Associated Press* v. *National Labor Relations Board*, 301 U. S. 103), the Fair Labor Standards Act (*Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186), and the Sherman Act (*Associated Press* v. *United States*, 326 U. S. 1), as well as the income tax, may likewise have affected publication by existing or potential publishers.

Amendment freedoms.[35] The burden, non-existent for some, of first importance for others, is merely a consequence of the hard and enduring fact that most of the truly effective pressures and sanctions on conduct are private or internal, protection from which simply cannot be the business of the First Amendment.

B. The case may be put more affirmatively in somewhat different aspect. The basic legislative problem here is to preserve the conditions under which the legislative process can function, independently and intelligently. The technique of disclosure is thought by many to permit such independent and intelligent operation. The permissible purposes of this technique were summarized in the dissenting opinion of Mr. Justice Black in *Viereck* v. *United States,* 318 U. S. 236, involving the Foreign Agents Registration Act (22 U. S. C. 611, *et seq.*) (in which the Court found it unnecessary to pass on the statute's constitutionality because it held Viereck's activities not within its purview). Mr. Justice Black said (at p. 251):

> * * * Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers

[35] This is all the more true, of course, when the feared sanction is not legal at all but social or economic, such as a hostile public reaction resulting from disclosure of opinions or activities.

> may not be deceived by the belief that the information comes from a disinterested source. *Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment.* * * * [Emphasis added.]

On this view, disclosure—because it implements the conditions precedent to free and intelligent judgment, particularly in a large, diverse, and segmented political economy—is not improper merely because it may restrain some whose purveyance of their ideas is more effective or congenial when it is anonymous. The test of conformity with the First Amendment cannot be limited to the disclosure requirement *in vacuo;* rather, the test must consider the effectiveness of the disclosure to forward the conditions which underlie the body of political freedoms protected by the Amendment.

In *Associated Press* v. *United States,* 326 U. S. 1, this Court, in sustaining an antitrust prosecution against a press association, answered an objection that the prosecution was prevented by the First Amendment, by saying (at p. 20):

> The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free

> press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. The First Amendment affords not the slightest support for the contention that a combination to restrain trade in news and views has any constitutional immunity.

This was express recognition that it is the legitimate business of Congress to maintain the conditions on which freedoms of expression depend. The present legislation has a comparable goal. A primary aim of the right to petition and the other First Amendment rights is to keep open the channels of communication between the represented and the representative. When Congress finally drew the conclusion, out of its experience of many decades, that the integrity of the legislative process was threatened by its inability to appraise the sources of the stream of demands flowing from the "public," it sought to free the channels by requiring disclosure of the sponsorship of those seeking to influence it directly. What Con-

gress attempted is to remove anonymity from those who are operating in certain concealed ways to convey their views on legislation, and thus, in a measure, to make itself more responsible to the public it represents. It would be remarkable if the freedom to speak of those who have funds and agents to enhance themselves were held to be infringed by legislation designed to preserve a meaningful freedom to speak for all, as well as a meaningful responsibility of the representative to the represented, without respect either to the accidents of finance or the artifices of publicity. Cf. *New York ex rel. Bryant* v. *Zimmerman,* 278 U. S. 63, 72.[36]

IV. THE INFORMATION SHOULD NOT HAVE BEEN DISMISSED ON THE BASIS OF THE ALLEGED INVALIDITY OF THE PENAL PROVISION OF SECTION 310 (B) WHICH IS PLAINLY SEPARABLE

A. Section 310 (a) of the Lobbying Act provides for a fine of not more than $5,000 or imprisonment for not more than twelve months for a violation of the Act (*infra,* pp. 94–95).

Section 310 (b) states:

> In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from

[36] See the Report of the President's Committee on Civil Rights (*To Secure These Rights*, 1947), pp. 52–53, 164, approving disclosure legislation broader than the Federal Regulation of Lobbying Act, as it is applied in this case.

> the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

Judge Holtzoff invalidated Section 308 because he found the penal provision of Section 310 (b) unconstitutional and inseparable, and also gave this as an alternative ground for striking down Section 305 (R. 39–40). In our view, it is not necessary to decide whether Section 310 (b) is constitutional. The District Court's holding that Sections 305 and 308 of the Act are invalid because of the penal provisions of Section 310 (b) was clearly wrong in the face of the separability clause, applicable to the whole Legislative Reorganization Act, which provides that "if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby." 60 Stat. 812, 814, *infra*, p. 95.

Examination of the statute shows that Section 310 (a) makes a violation of either Section 305

or 308 a misdemeanor, punishable by fine or imprisonment or both. The prohibition of Section 310 (b) is expressly stated to be "in addition to the penalties provided for in subsection (a)." Thus, if Section 310 (b) were eliminated, there would still be left a statute defining specific duties and providing a specific penalty for violation of any such duty. The elimination of the additional penalty in Section 310 (b) in no way affects the construction of the Act or the nature of the duties prescribed thereby. It is difficult, very difficult, to conceive of a section which could be severed with less effect on the structure of the Act as a whole. Congress undoubtedly did not desire the whole Act to stand or fall on this supplemental and minor penalty. Therefore, any possible invalidity in Section 310 (b) does not invalidate either Section 305 or 308. Compare *Electric Bond & Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419, 433–437; *Kay* v. *United States,* 303 U. S. 1, 6–7, 8; *Watson* v. *Buck,* 313 U. S. 387, 395–397. See, also, *infra,* pp. 84–85.[37]

The separability argument may be approached in another way: The contention that a penalty is improper cannot normally be made by one against whom the penalty has not been imposed. This

[37] In *National Assn. of Mfrs.* v. *McGrath,* 103 F. Supp. 510 (D. D. C.), vacated as moot, 344 U. S. 804, the three-judge court, speaking through Judge Holtzoff, expressly held Section 308 severable from Section 305.

point was involved in *United States* v. *Wurzbach*, 280 U. S. 396, in which an indictment under the Federal Corrupt Practices Act had been dismissed on the basis of the invalidity of the substantive portions of the statute. In support of the judgment the defendant argued in this Court that the Act was unconstitutional because it was uncertain and vague as to which of the several sections imposed the penalty (Brief for Appellee, No. 66, O. T. 1929, pp. 19, 24). The Court, by Mr. Justice Holmes, held that the objection on this score was premature (p. 399):

> It is said to be uncertain which of several sections imposes the penalty and therefore uncertain what the punishment is. *That question can be raised when a punishment is to be applied.* [Emphasis added.]

The *Wurzbach* case involved the contingency that the inability to determine which of two penal provisions was applicable would make enforcement of the statute impossible. If in that situation the penal provision cannot be attacked prior to its application, it must be beyond debate that such a provision cannot be attacked where it is so clearly separable from an unquestionably valid penal provision like Section 310 (a).

B. If the validity of Section 310 (b) is to be reached, we suggest that, properly read, it is sustainable.

We have shown that the statute means at least to cover (a) the so-called professional lobbyists,

i. e., those who engage themselves for pay to influence the passage or defeat of legislation, and (b) organizations and persons who solicit or spend money for the purpose of paying others to communicate with Congress or of conducting campaigns to induce other people to express their views to Congressmen. It is clear that the prohibitions of Section 310 (b) against "attempting to influence * * *" can bear a similar meaning; and, if necessary to sustain its constitutionality, the section would have to bear that meaning. As a matter of fact, Section 310 (b) bears some internal evidence that it was intended to operate more narrowly than the rest of the Act. For, unlike Sections 307 and 308, the word "proposed" is added before "legislation." Both Sections 307 and 308 predicate coverage under the Act on acts done with a purpose to "influence * * * the passage or defeat of any legislation by the Congress * * *," while Section 310 (b) prohibits the attempt to influence "the passage or defeat of any *proposed* legislation * * *" [Emphasis added]. It would seem that in adding the word "proposed" in Section 310 (b) Congress added a definite limitation,[38] which may well limit the reach of the penalty provision to direct contact with Congress, or the stimulation of direct contact, on behalf of others. In like vein, the pro-

[38] There was no comment on the purpose of this provision in the legislative reports on the bill nor on the floor of either House.

hibition on appearances before a Congressional committee can easily be read as referring to paid appearances on behalf of others and not to appearances in one's own behalf.

So interpreted, Section 310 (b) does not appear very different from the temporary suspension of the professional license of a lawyer, accountant, or doctor for some misconduct or failure to abide by a statutory requirement. The convicted lobbyist similarly loses, for a three years period, his occupational right to communicate with Congress on behalf of others or to induce others so to communicate. Furthermore, this penalty is certainly less drastic than the deprivation of a convicted felon's civil rights or the disqualification of some offenders from holding any office of honor, trust, or profit under the United States (*e. g.*, 18 U. S. C. 202, 205, 206, 207). Convicted prisoners' rights and freedoms are also subject to severe limitations. See *Price* v. *Johnston,* 334 U. S. 266, 285; *Stroud* v. *Swope,* 187 F. 2d 850 (C. A. 9), certiorari denied, 342 U. S. 829; *Numer* v. *Miller,* 165 F. 2d 986 (C. A. 9); *Adams* v. *Ellis,* 197 F. 2d 483 (C. A. 5).

V. THE VALIDITY OF THE LOBBYING ACT AS APPLIED TO OTHER SITUATIONS IS NOT BEFORE THE COURT

So far as the present information is concerned, the preceding sections have disposed, we believe, of the grounds on which the District Court held the Lobbying Act invalid, and also of the other

constitutional objections raised below by defendants. However, the District Court and appellees have raised issues of constitutionality which can only emerge in factual settings other than that posed by this case. The *N. A. M.* decision, on which the District Court relied as decisive, did not present, as does this case, only acts of direct contact with Congress or the deliberate stimulation of such direct contact. The constitutional questions raised in that litigation presupposed a broader coverage of the Act than it is necessary to assume for the present litigation. The wider issues of the *N. A. M.* case have been interjected here but they have no proper place, and the Court need not and should not concern itself with resolving them. A familiar set of related principles of constitutional adjudication calls upon the parties and the Court to restrict consideration to the precise question presented by the information against these defendants.

A. The Court has repeatedly announced that it does not pass on issues of validity until they inescapably come before it in concrete form, with the factual background and record appropriate for decision of the precise question; the Court neither renders advisory opinions on hypothetical cases nor declares general constitutional doctrines unrelated to the setting of a particular case.[39]

[39] See *Federation of Labor* v. *McAdory*, 325 U. S. 450, 461–2; *United Public Workers of America* v. *Mitchell*, 330 U. S. 75; *Rescue Army* v. *Municipal Court*, 331 U. S. 549,

As the Court recently stated in *United Public Workers* v. *Mitchell*, 330 U. S. 75, in which it refused to entertain a complaint, at the instance of persons who had not violated the Act, that the Hatch Act violated rights under the First Amendment and was unconstitutionally vague under the Fifth Amendment (at pp. 89–90):

> The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other.

These doctrines, which have been explicitly applied to constitutional cases under the Criminal

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568 *ff*, and earlier cases there collected; *United States* v. *Petrillo*, 332 U. S. 1, 5; *Toomer* v. *Witsell*, 334 U. S. 385, 394; *Parker* v. *Los Angeles County*, 338 U. S. 327, 333; *District of Columbia* v. *Little*, 339 U. S. 1, 3–4; *Sweatt* v. *Painter*, 339 U. S. 629, 631; *Touhy* v. *Ragen*, 340 U. S. 462, 469; *United States* v. *Hayman*, 342 U. S. 205, 223; *United States* v. *Rumely*, 345 U. S. 41, 48.

Appeals Act (*United States* v. *Petrillo,* 332 U. S. 1, 5, 10–12; *United States* v. *Spector,* 343 U. S. 169, 172), counsel against determination here of any case other than that of these four defendants as they are charged in the ten counts of the present information. Neither the *N. A. M.* case nor any other litigation which may raise broader issues is here for decision, and the circumstances upon which will turn the applicability and validity of the Lobbying Act as it applies to those other cases are not now before the Court.

B. Appellees' complaint is also limited to their own case by the principle that they have standing to challenge the validity of legislation only on their own behalf and only as it affects them adversely. They cannot challenge the statute by flaunting the rights of others, whether the cases be actual or hypothetical. *United States* v. *Wurzbach,* 280 U. S. 396, 399; *Robinson* v. *United States,* 324 U. S. 282, 286; *Kuehner* v. *Irving Trust Co.,* 299 U. S. 445, 455.[40] For instance, in Chief Justice Vinson's opinion in *Dennis* v. *United States,* 341 U. S. 494, 515–516, it was pointed out that the defendants, convicted for conspiracy to teach and advocate the violent overthrow of the Government, could not complain of possible difficulties in the application of the statute to other persons and in other circumstances. So here, we do not believe that defendants should

[40] As its opinion states, *Barrows* v. *Jackson,* 346 U. S. 249, 255–260, rests on a "unique situation."

be permitted to attack all possible applications of the statute where their conduct brings them within a clearly defined area validly covered by the legislation.[41]

C. A third governing principle is that of separability. The defendants' contention is that a valid application of the "purpose" language of Section 307 cannot be permitted to stand because of a possibly too broad separate application of that same language in other cases. But there can be no question that the Lobbying Act can without difficulty be applied to those factual situations which validly come with it, and that Congress intended it to stand insofar as it possibly could. It contains a separability clause (*infra,* p. 95) and, by its very terms, that clause is enough to establish the strongest of presumptions in favor of divisibility as to both separate provisions and separate applications of the same provision. *Supra,* pp. 76–77. Judge Cardozo stated in *People ex rel. Alpha Portland Cement Co.* v. *Knapp,* 230 N. Y. 48, 60, 129 N. E. 202, 207:

> * * * Severance does not depend upon the separation of the good from the bad by paragraphs or sentences in the text of the enactment * * *. The principle of divi-

[41] A statute may, of course, be invalid as applied to one set of facts and valid as applied to another. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne,* 224 U. S. 354; *Kansas City Southern Ry. Co.* v. *Anderson,* 233 U. S. 325; *Poindexter* v. *Greenhow,* 114 U. S. 270, 295; *Federation of Labor* v. *McAdory,* 325 U. S. 450, 462.

sion is not a principle of form. It is a principle of function.

The test is whether the constitutional and unconstitutional provisions and applications of a statute are "so mutually connected with and dependent on each other * * * as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently." *Warren* v. *Mayor of Charlestown,* 2 Gray (Mass. 1854) 84, 99; see also Brandeis, J., in *Dorchy* v. *Kansas,* 264 U. S. 286, 289–290; *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 322 (Hughes, C. J., dissenting).[42]

There is no doubt that Congress would have intended the Lobbying Act to operate on the narrower basis we have suggested, even if a broader application to opinion-molding agencies[43] were prohibited. The legislative history we have collated above (*supra,* pp. 29–42) shows a strongly felt Congressional desire to deal with all those who communicate with Congress, including the initiators of letter-writing campaigns from the "grass roots."

D. Still another controlling principle is that the possible existence of borderline, peripheral, or difficult cases does not invalidate a statute, or

[42] The subject is discussed more fully in Stern, *Separability and Separability Clauses in the Supreme Court,* 51 Harv. L. Rev. 76.

[43] Such as the Committee for Constitutional Government, involved in *United States* v. *Rumely,* 345 U. S. 41.

make it unconstitutionally indefinite, when it can be properly applied to the set of circumstances before the Court. For instance, in *United Public Workers* v. *Mitchell,* 330 U. S. 75, 103–104, the Court upheld the Hatch Act's proscription against taking "any active part in political management or in political campaigns," as applied to the clear case of a ward executive committeeman and worker at the polls, but expressly refused to examine any further at that time into the validity of the general standard.[44]

There is therefore no warrant to trespass beyond this case in the charge that the Lobbying Act would be unconstitutional if it were applied to the National Association of Manufacturers or to some other litigation which may come in the future or may never arise.[45]

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[44] See also, *Williams* v. *United States*, 341 U. S. 97, 101–2; *Jordan* v. *De George*, 341 U. S. 223, 231–2; *Dennis* v. *United States*, 341 U. S. 494, 516; *Beauharnais* v. *Illinois*, 343 U. S. 250, 263–4; *United States* v. *Petrillo*, 332 U. S. 1, 7; *Robinson* v. *United States*, 324 U. S. 282, 286; *United States* v. *Wurzbach*, 280 U. S. 396, 399.

[45] Even if the broader interpretations of some of the statements in *Thornhill* v. *Alabama*, 310 U. S. 88, 97–98, on the status of legislation touching on free speech, are now the law, there are several reasons why that ruling does not control here:

(1) it applies primarily to State court decisions where this Court's power to interpret the statute is limited and the State court's construction must be accepted (see *Dennis* v. *United States*, 341 U. S. 494, 501–2); where a federal statute is in issue this Court has at hand the remedy of interpreta-

Guided by each of these fundamental principles, we abstain from discussing the validity of the Lobbying Act in circumstances other than those presented by this particular information. It is our earnest hope that the Court will refuse, once again, "to strike down a statute as violative of * * * constitutional guarantees * * * when the statute has not been, and might never be, applied in such manner as to raise the question [defendants] ask us to decide." *United States* v. *Petrillo,* 332 U. S. 1, 11.

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tion (cf. *Winters* v. *New York*, 333 U. S. 507, 510; *Fox* v. *Washington*, 236 U. S. 273, 277);

(2) the *Thornhill* ruling applied to what the Court believed to be an unlimited and outright ban on one form of free communication, and not merely, as here, a possible minor restriction on a form of communication;

(3) *Thornhill* concerned a direct regulation of free speech and not, as here, a regulation of other conduct (*i. e.*, reporting and registration of certain political conduct) which affects speech only incidentally and tangentially (cf. *United States* v. *Petrillo*, 332 U. S. 1).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court be reversed and the case remanded to that Court for further proceedings on the information.

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SEPTEMBER 1953.

APPENDIX

LEGISLATIVE REORGANIZATION ACT OF 1946

* * * * *

Title III—Regulation of Lobbying Act [60 Stat. 812, 839; 2 U. S. C. 261–270]

SHORT TITLE

SEC. 301. This title may be cited as the "Federal Regulation of Lobbying Act."

DEFINITIONS

SEC. 302. When used in this title—

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(d) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(e) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Con-

gress, and includes any other matter which may be the subject of action by either House.

DETAILED ACCOUNTS OF CONTRIBUTIONS

SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of—

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of $500 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or fund; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding $10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

RECEIPTS FOR CONTRIBUTIONS

SEC. 304. Every individual who receives a contribution of $500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and

address of the person making such contribution and the date on which received.

STATEMENTS TO BE FILED WITH CLERK OF HOUSE

SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

(1) the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by sub-

section (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

STATEMENT PRESERVED FOR TWO YEARS

SEC. 306. A statement required by this title to be filed with the Clerk—

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

PERSONS TO WHOM APPLICABLE

SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Con-

gress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

REPORTS AND STATEMENTS TO BE MADE UNDER OATH

SEC. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

PENALTIES

SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than $5,000 or imprisonment

for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

EXEMPTION

SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

* * * * *

[SEPARABILITY CLAUSE (60 STAT. 812, 814)]

SEC. 1. (b) *Separability Clause.*—If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

U. S. GOVERNMENT PRINTING OFFICE: 1953